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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 155.

ROBERT C. CRAWFORD, PLAINTIFF IN ERROR,

vs.

WILLIAM F. HALSEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 23, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JULY 29, 1887.

a UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit, and Eastern District of Louisiana.

HENRY BARNEWALL and WILLIAM C. GAYNOR, Assignees of Crawford, Walsh, Butt & Co., Robert C. Crawford, Subrogated, Plaintiffs in Error,
vs.
WILLIAM F. HALSEY, Defendant in Error.
} No. 7929.

E. M. Hudson, Esq., attorney for plaintiff in error; Bayne & Denegre, Esqs., attorneys for defendants.

Writ of error returnable to the Supreme Court of the United States, at Washington, D. C., the second Monday of October, A. D. 1884.

1 *Petition. Filed July 29th,* 1886.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

HENRY BARNEWALL and WM. C. GAYNOR, Assignees,
versus
W. F. HALSEY.
} No. 7929.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The petition of Henry Barnewall and William C. Gaynor, who are citizens of the State of Alabama, respectfully represents that they are the duly appointed assignees in bankruptcy of Crawford, Walsh, Butt & Co., of Mobile, Alabama, a firm consisting of James Crawford, Charles Walsh, Cary W. Butt, Robert C. Crawford, and Charles Walsh, Jr., which said firm and which said individuals were duly adjudged bankrupts by the district court of the United States
2 for the southern district of Alabama on the 12th day of June, 1874.

That W. F. Halsey, who is a citizen of the State of Louisiana, was indebted to said firm on book account, on the 28th February, 1874, in the sum of four thousand one hundred and eighteen dollars and fifty-five cents, and that said sum is still due and unpaid by said Halsey to said firm, together with interest at the rate of eight per cent. per annum from said 28th February, 1874, and that said Halsey refuses to pay the same.

Wherefore, the premises considered, your petitioners pray that said W. F. Halsey be cited to appear and answer this petition, and, after due and legal proceedings had, there be judgment decreeing said W. F. Halsey to be indebted to petitioners as assignees in bank-

ruptcy as aforesaid, with interest as aforesaid, and that said W. F. Halsey be condemned to pay said sum and interests and costs to your petitioners; and petitioners pray for all general and equitable relief.

(Signed) ANDREW J. MURPHY,
3 *Attorney for Petitioner.*
(Signed) HUDSON & FEARN, *Att'ys.*

Citation. Issued July 29th, 1876.

HENRY BARNEWALL & WM. C. GAYNOR, Assignees, &c., *vs.* W. F. HALSEY. } No. 7929.

The President of the United States of America to the marshal of the district of Louisiana, Greeting:

You are hereby commanded to summon W. F. Halsey, a citizen of the State of Louisiana, to comply with the demand of Henry Barnewall and William C. Gaynor, assignees in bankruptcy of Crawford, Walsh, Butt & Co., and citizens of the State of Alabama, contained in the petition, of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and dis-
4 trict of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of September, 1876.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 29th day of July, A. D. 1876, and of the Independence of the United States of America the 101st year.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's Return.

Rec'd July 31st, 1876, by the U. S. marshal, and on the 26th day August, 1876, served a copy hereof, with petition accompanying the same, on W. F. Halsey, within named, by delivering the same to Mrs. Ellen Kenney, a person over the age of 14 years, at the domicile of said W. F. Halsey, No. 209 Prytania street, and resid-
5 ing therein. The name of said Mrs. Ellen Kenney I learned by interrogating her.

Aug. 26, 1874.
(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

Exception. Filed November 6th, 1876.

United States Circuit Court, Fifth Circuit and District of Louisiana.

H'y Barnewall & W. C. Gaynor, Assignees, &c.,
vs.
W. F. Halsey. } No. 7929.

The defendant excepts to the petition of Henry Barnewall and William C. Gaynor, assignees of James Crawford, Charles Walsh, Carey W. Butt, Robert C. Crawford, and Charles Walsh, Junior, plaintiffs in the above-entitled cause, and for grounds of exception shows—

1. That the allegations of said petition are general and vague.

2. That the cause of action is not stated with sufficient particularity.

3. That the nature of the demand and the ground of alleged indebtedness is not stated with any particulars.

6 4. That defendant, by reason thereof, is not able to answer thereto.

Wherefore he prays that said petition be dismissed with costs.

(Signed) CLARKE, BAYNE & RENSHAW,
For Def't.

Charles J. Hoffman, being duly sworn, deposeth and saith that he is agent and attorney-in-fact for William F. Halsey, who is absent from the State of Louisiana; that the allegations of the foregoing exception are true to the best of his knowledge and belief.

(Signed) CHAS. F. HOFFMAN.

Sworn to and subscribed before me this 6th day of November, 1876.

(Signed) F. B. VINOT,
U. S. Comm'r.

H'y Renshaw, Jr., being duly sworn, deposeth and saith that he is one of the counsel for William F. Halsey, who is absent from the State of Louisiana; that the allegations of the foregoing exception are true to the best of his knowledge and belief.

(Signed) HENRY RENSHAW, Jr.

7 Sworn to and subscribed before me this sixth day of November, 1876.

(Signed) F. B. VINOT,
D'y Clerk.

Amended and Supplemental Petition and Account. Filed December 5th, 1876.

Circuit Court of the United States for the Fifth Judicial Circuit and District of Louisiana.

HENRY BARNEWALL & WILLIAM C. GAYNOR, Assignees, &c.,
vs.
W. F. HALSEY. } No. 7929.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and district of Louisiana:

The amended and supplemental petition of Henry Barnewall and William C. Gaynor, citizens of the State of Alabama, the duly appointed assignees in bankruptcy of Crawford, Walsh, Butt & Co., bankrupts, of Mobile, Alabama, respectfully shows—

That in December, 1873, the said firm of Crawford, Walsh, Butt & Co., being the owners of a certain cargo of coffee, amounting to about four thousand bags, directed the same to be sold in
8 New Orleans by their own agent and the bills receivable for the price of said cargo of coffee to be delivered to the defendant, W. F. Halsey; that accordingly the agents of the said firm of Crawford, Walsh, Butt & Co. sold said coffee, and in pursuance of the instructions of said firm delivered the said bills receivable to the defendant, W. F. Halsey, who bound himself to account for the same to the said Crawford, Walsh, Butt & Co. and to apply the proceeds thereof as they should direct; that in due course said defendant received the amount of said bills, to wit, one hundred and sixty thousand three hundred and eight $\frac{5}{100}$ dollars in gold, the proceeds of sale of said coffee belonging to the said Crawford, Walsh, Butt & Co., and for which he was accountable to them as aforesaid; that at the date of the said delivery of said bills receivable to and their collection by defendant he was the agent in New Orleans of Brown Bros. & Co., of London, Great Britain, between whom and the said Crawford, Walsh, Butt & Co. there were business relations involving the transfer of funds by said
9 Crawford, Walsh, Butt & Co. to said Brown Bros. & Co., to facilitate which was the object of causing the proceeds of sale of said cargo of coffee to be placed in the hands of said defendant in order that thereby there would be made available to said Brown Bros. & Co. such amount of said proceeds as the said Crawford, Walsh, Butt & Co. might designate and instruct said defendant should be remitted to or placed at the disposal of the said Brown Bros. & Co., and the sole mission of the said defendant in the premises, in connection with said proceeds of sale of said cargo and with said cargo itself was to receive and hold said proceeds subject to the order of said Crawford, Walsh, Butt & Co. and for their account,

which he promised faithfully to do; that in accordance with the orders and with the authority of said Crawford, Walsh, Butt & Co. said defendant remitted to said Brown Bros. & Co. one hundred and fifty-two thousand three hundred and twenty $\frac{51}{100}$ dollars in gold, but defendant retained in his hands unjustly and unlawfully
10 the sum of four thousand and sixty-eight $\frac{45}{100}$ dollars in gold of said proceeds belonging to said Crawford, Walsh, Butt & Co., which he refused to account for to them and still refuses to account for to your petitioners, as their assignees in bankruptcy, although amicably demanded, and he is liable to your petitioners as such assignees for the same, with interest from said 28th day of February, 1874, as in the original petition alleged.

Your petitioners further show that the said W. F. Halsey further also retained out of moneys of the said Crawford, Walsh, Butt & Co., placed in his hands to be accounted for by him to them, the additional sum of fifty dollars and ten cents in gold, claiming that he has disbursed the said sum for said Crawford, Walsh, Butt & Co. for their account for premiums on fire insurance on a certain cargo of coffee ex brig Glide, as per his account of February 14, 1874, and your petitioners deny that he ever made said disbursements, and allege that the same is the amount of rebate of fire premiums, being
11 fifteen per centum of three hundred and thirty-four dollars of premiums paid by him, and belongs to the estate of the said bankrupts, Crawford, Walsh, Butt & Co., for which the said Halsey is liable, together with interest, as alleged in the original petition, from February 28th, 1874.

Your petitioners further show that the copy of the account hereto annexed and made part of this amended and supplemental petition will show more fully all the items of the account sued on, and that your petitioners adopt all and singular the allegations contained in the original petition filed herein.

Wherefore your petitioners pray that they may be allowed to file this their amended and supplemental petition; that the said W. F. Halsey may be served with a copy thereof and be cited to make answer thereto, and that after due legal proceedings there be judgment, as prayed for in the original petition, decreeing the said W. F. Halsey to be indebted to petitioners, as assignees in bankruptcy as aforesaid, in the sum of four thousand one hundred and eighteen
12 $\frac{55}{100}$ dollars in gold, with interest at the rate of eight per centum per annum thereon from February 28th, 1874, and that the said W. F. Halsey be condemned to pay to your petitioners said sum and interest and all costs of suit; and petitioners pray for all general relief needful in the premises.

(Signed) HUDSON & FEARN,
Att'ys for Petitioners.

Account Filed with Foregoing Petition.

Mr. W. F. Halsey to Crawford, Walsh, Butt & Co.

1874.

Feb'y 23. For difference in premium of fire ins'ce on cargo coffee per "Glide," viz:

		Am't charged.	Am't due.	Dif.	Gold.
1873.					
Dec'r 16	Per your % Feb'y 14, '74	67	56 95	10 05	
17	" " " "	75	63 75	11 25	
19	" " " "	100	85	15	
23	" " " "	92	78 20	13 80	
		$334	$283 90	$50 10	
	Due Feb'y 14, '74				$50 10
1874.					
Feb'y 28	For diff'ce in premiums of fire ins. on cargo coffee per Lizzie Fox.				
1873.					
Dec. 16	Per your % Feb'y 24, '74	100	85	15	
17		75	63 75	11 25	
19		87 50	74 38	13 12	
22		105	89 25	15 75	
1874.					
Jan'y 15		37 50	31 87	5 63	
		$405	344 25	60 75	
	Due Feb'y 24, '74				$60 75
Feb'y 28	For 2½ % comm'n on sales coffee, ex Lizzie Fox, incorrectly charged in your %, sales Feb'y 24, '74, say 2½ % on $160,408.12, due Feb'y 24, '74				4,007 70
	Gold				$4,118 55

E. E. Mobile, March 21, 1874.

13 *Plea and Answer. Filed January 11th,* 1877.

U. S. Circuit Court, 5th Circuit, District of Louisiana.

HENRY BARNEWALL & WILLIAM C. GAYNOR, Assignees, &c.,

vs.

WILLIAM F. HALSEY.

The defendant in the above-entitled cause pleads to the demand set forth in said plaintiffs' petition, and as an exception thereto, that all the matters and things set forth in said petition were by said Crawford, Walsh, Butt & Co. asserted against this defendant; that to avoid litigation they, the said Crawford, Walsh, Butt & Co., for the use of themselves, the Mobile and Ohio Railroad Company, and G. M. Parker and Sons, the two latter claiming as assignees of any intent of said Crawford, Walsh, Butt & Co. to any balance remaining from shipments of coffee on joint account with Wright, Brown

& Co. which might remain after the sale thereof by this defendant as agent of Brown Bros. & Co., of which assignment this defendant had been notified, on or about the 3d of December, 1873, submitted the same to the arbitrament of L. J. Webster and Adolph
14 Schrieber, with the powers of amicable compounders, and in case of disagreement that the same should be submitted to an umpire to be chosen by them, and in case of inability to agree upon said umpire that to such person as the counsel of said respective parties, to wit, Thomas L. Bayne, Esq., on the part of the defendant, and Henry C. Miller, Esq., on the part of said Crawford, Walsh, Butt & Co., G. M. Parker & Sons, and The Mobile and Ohio Railroad Company should name; that the said arbitrators failing to agree, William Agar was duly appointed umpire, and that after due hearing by the said arbitrators and said umpire, the said umpire determined that the claim against this defendant was not just, and so informed *of* this defendant; that said decision is a bar to said demand; that the said umpire received powers to act as an amicable compounder under said submission; that said submission and decision are hereto annexed as part hereof.

Wherefore he prays that said petition be dismissed.

15 If said plea and exception should be overruled, and not otherwise, the defendant not waiving the same, but insisting therein, denies all indebtedness to said plaintiffs and prays judgment with costs.

(Signed) CLARKE, BAYNE & RENSHAW.

Document 1. *Filed with Plea, Exception, and Answer.*

Whereas differences have arisen and now exist between Crawford, Walsh, Butt & Co., claiming for the use of G. M. Parker & Sons and the Mobile & Ohio Railroad Company, of the one part, and William F. Halsey in reference to the following charges contained in the accounts of the said Halsey rendered to said Crawford, Walsh, Butt & Co., the amount of which charges have been retained by said Halsey out of the funds of said Crawford, Walsh, Butt & Co., to wit:

1873.				
Dec'r	16.	Premiums of insurance in gold		$67
	17.	Do.	do.	75
	19.	Do.	do.	100
	23.	Do.	do.	92

16 The above items are contained in the charges against cargo of brig "Glide."

1873.					
Dec'r	16.	Premiums of insurance in gold		$100	
	17.	Do.	do.	75	
	19.	Do.	do.	87	50
	23.	Do.	do.	105	
1874.					
Jan.	15.	Do.	do.	37	50
Feb'y	24.	Commission on sale of coffee		4,007	70

Now, it is hereby agreed by and between the parties hereto that the differences between them in reference to said charges made by said Halsey shall be submitted to the decision of arbitrators, Mr. L. J. Webster to be selected by the said Crawford, Walsh, Butt & Co., G. M. Parker & Son, and the Mobile & Ohio Railroad Co., of the one part and Mr. Ad. Schrieuber, to be selected by said W. F. Halsey, of the other part. The said arbitrators are fully authorized to receive the statements and correspondence of the parties interested, to call and examine the witnesses, and to determine the questions and matters at issue between said parties, and to award accordingly as
17 amicable compounders. When the arbitrators shall have determined the amount due, if any, the same shall be paid upon the joint receipt of the parties for whose use this claim is brought.

In the event of the disagreement of the arbitrators the issue shall be submitted to an umpire, with power to act as amicable compounder; said umpire to be appointed by the arbitrators, or, if they cannot agree, by Henry Miller and Thos. L. Bayne, Esq's, the decision of the umpire to be final.

The party failing to comply with the award shall, in addition to the sum awarded to be due, forfeit and pay to the other the sum of five hundred dollars.

New Orleans, May 12th, 1875.

(Signed) W. F. HALSEY,
(Do.) FINNEY & MILLER,
Att'ys for Crawford, Walsh, Butt & Co., The Mobile and Ohio R. R. Co., and G. M. Parker & Sons.

18 *Document* 2. *Filed with Plea, Exception, & Answer.*

CRAWFORD, WALSH, BUTT & CO.; G. M. PARKER & CO., MOBILE & OHIO R. R. Co., Subrogated,

vs.

W. F. HALSEY.

In arbitration. Umpire's decision.

In view of the failure of Crawford, Walsh, Smith & Co., and the taking possession of the "Lizzie Fox" cargo by W. F. Halsey, the commission for sale charged by the latter is legitimate and must be allowed, inasmuch as it involves guarantee.

In consideration of the labor and attention given to insurance on the "Lizzie Fox" and "Glide" cargoes, and of cash advances for freight, brokerage, and other preference charges on the same made by W. F. Halsey, the rebate allowed on insurance premium is a small compensation, and W. F. Halsey is entitled to retain it.

New Orleans, June 10, 1875.

(Signed) WILLIAM AGAR.

Motion & Order. Exception Fixed.

19 Extract from the Minutes, November Term, 1879.

NEW ORLEANS, MONDAY, *February 2d*, 1880.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

HENRY BARNEWALL & W. C. GAYNOR, Assignees,
vs.
W. F. HALSEY. } No. 7929.

On motion of Hudson & Fearn, counsel for the plaintiffs, it is ordered that the exception set up as a plea, filed with the answer on January 11th, 1877, be set down for trial on Saturday, the 7th February, 1880, at 11 o'clock a. m., and that defendant be notified thereof.

Document Offered by Plaintiff April 20th, 1880.

For value received, and by virtue of authority in me vested by the decrees of the hon. district court for the southern district of Alabama, I, Wm. C. Gaynor, assignee of Crawford, Walsh, Smith & Co.; Crawford, Walsh, Butt & Co.; Walsh, Smith, Crawford & Co., and Walsh, Crawford & Co., bankrupts, have bar-
20 gained, sold, assigned, transferred, and set over to Rob't C. Crawford the claim now in suit against J. W. Halsey at New Orleans, La., and do authorize him to prosecute the suit, in my name, to a final termination, if necessary or advisable to secure the same.

Witness my hand and seal this twenty-seventh day of May, A. D. 1879.

(Signed) WM. C. GAYNOR, [SEAL.]
Assignee of Crawford, Walsh, Smith & Co. et al., Bankrupts.

Document Offered by Plaintiff April 20th, 1880.

District Court of the United States for the Southern District of Alabama.

In Re CRAWFORD, WALSH, SMITH & Co., Bankrupts.

This cause coming on to be heard on the petition of William C. Gaynor, assignee of Crawford, Walsh, Smith & Co. and others, bankrupts, to ratify and confirm the sale made by him *of*
21 on the 27th day of May, A. D. 1879, to Rob't C. Crawford of the certain choses in action, book accounts, &c., and certain of the capital stock of the Mobile and Alabama Grand Trunk Railroad Company, all as in the said petition of said Gaynor is more particularly described; and it being made to appear to the court that the said sales were properly made and are to the advantage of the said estate, the same are hereby ratified and confirmed, and the right, title, and interest of the said bankrupts and of said assignee are hereby vested and confirmed in said Robert C. Crawford.

June 21, 1879.

JOHN BRUCE, *Judge.*

I, Henry S. Skaats, clerk of the district court of the United States for the southern district of Alabama, do hereby certify the foregoing to be — true and correct copy of an order of court made in the above-entitled cause.

In testimony whereof I hereunto subscribe my name and
22 affix the seal of said court this the 16th day of March, A. D. 1880.

[SEAL.] (Signed) HENRY S. SKAATS, *Clerk.*

Hearing and Submission.

Extract from the Minutes of April 20th, 1884.

BARNEWALL & GAYNOR, Assignees,
vs.
W. F. HALSEY. } No. 7929.

This cause came on for further hearing on the exception, and the court, having heard further evidence and the argument of counsel, took time to consider and allowed counsel 5 days to submit briefs.

Order. Exception Maintained and Suit Dismissed.

Extract from the Minutes of May 1st, 1880.

BARNEWALL & GAYNOR, Assignees,
vs.
W. F. HALSEY. } No. 7929.

23 The parties in this cause having heretofore filed a stipulation waiving the intervention of a jury, the cause came on to be heard on the exception of the defendant and was argued by counsel; and thereupon the court, considering that an assignment was made by Crawford, Walsh, Butt & Co. to Parker & Son; that the matter was submitted to amicable compounders, who rendered their judgment for defendant, and that the present plaintiff in interest (Robert Crawford, a member of the late firm of Crawford, Walsh, Butt & Co., bankrupts), cannot be heard to set up the invalidity of the transfer by said firm—

It is ordered, adjudged, and decreed that the exception be maintained, and that this suit be dismissed with costs.

Rule for a New Trial. Entered and Filed February 1st, 1883.

Circuit Court of the United States for the East. Dist. of La.

BARNEWALL & GAYNOR, Assignees R. C. Crawford, Subrogated,
vs.
WM. P. HALSEY.

24 On motion of E. Hudson, attorney for plaintiff—

It is ordered that Wm. F. Halsey, defendant, show cause, on Saturday, the 17th day of February, 1883, at 11 o'clock a. m., why the judgment rendered herein on May 1st, 1880, should not be set aside and a new trial granted on the grounds following, to wit:

That said judgment is contrary to the law and the evidence, in that the court failed to give effect to evidence showing an assignment of the claim sued on by the bankrupts within less than two months of the commencement of proceedings in bankruptcy, and in that the court erred in holding that one of the discharged bankrupts, now subrogated herein, could not be heard to contest the validity of the said assignment of April 6th, 1874.

Marshal's Return.

Received February 2d, 1883, by the U. S. marshal, and on Feb'y 2d, 1883, I served a copy of the within rule on Bayne & Denegre, att'ys, by leaving the same at their office in the hands of C.
25 B. Bayne, their clerk.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Hearing & Submission of Rule.

Extract from the Minutes of April 21st, 1883.

BARNEWALL & GAYNOR, Assignees,
vs.
W. F. HALSEY. } No. 7929.

This cause came on to be heard on the motion of the plaintiffs for a new trial and was argued by the counsel for the parties, respectively, and submitted, and the court took time to consider.

Order. Attorneys to Prepare a Statement of Facts.

Extract from the Minutes of June 4th, 1884.

BARNEWALL & GAYNOR, Assignees,
vs.
W. F. HALSEY. } No. 7929.

In this case, heretofore submitted on the motion of the plaintiffs for a new trial, the court directs that the defendant's counsel
26 prepare a statement of the facts herein and submit it to the counsel for the plaintiffs, and upon the same being filed the court shall prepare its statement and sign the judgment heretofore rendered herein.

Hearing and Submission of Facts.

Extract from the Minutes of June 21st, 1883.

BARNEWALL & GAYNOR, Assignees,
vs.
W. F. HALSEY. } No. 7929.

Now, on this day, in open court, came the counsel for the parties herein and discussed the facts of the case, and the court took time to consider.

Defendant's Bill of Exceptions. Filed June 22d, 1883.

United States Circuit Court.

BARNEWALL & GAYNOR, Assignees R. C. Crawford, Subrogated,
vs.
W. F. HALSEY. } No. 7929.

27 Be it known that on the 1st of Feb'ry, 1883, a rule for a new trial was filed in this case by E. M. Hudson, Esq., as attorney for Robert C. Crawford, claiming to be transferee under a receipt from W. C. Gaynor as assignee, of May —, 1879, and when the same was called for hearing before the court, Thos. L. Bayne, Esq., as attorney for W. F. Halsey, objected to the consideration of said rule and any action thereon by the court, on the ground that on the 17th of April, 1880, a trial was had before this court on the exception filed by said defendant, alleging that the arbitration made and decision rendered thereunder by the arbitrators and amicable compounders selected by the parties, respectively, under the agreement, marked A & B, and petition, and attached to this bill of exception (transcribed on pages 13, 14, 15, 16, 17, & 18 of this transcript) was final, as appears by said exceptions and award attached hereto; that judgment was rendered by the court on the first day of May, 1880, as follows: "The parties in this cause, having
28 heretofore filed a stipulation waiving the intervention of a jury, the cause came on to be heard on the exception of the defendant herein and was argued by counsel, and thereupon, the court considering that an assignment was made by Crawford, Walsh, Butt & Co. to Parker & Son, that the matter was submitted to amicable compounders, who rendered their judgment for defendant, and that the present plaintiff in interest, Robert Crawford, member of the late firm of Crawford, Walsh, Butt & Co., bankrupts, cannot be heard to set up the invalidity of the transfer by said firm, it is ordered, adjudged, and decreed that the exception be maintained and the suit be dismissed with costs," which was duly entered upon the minutes of the court on that day; that the minutes of the court were duly signed by the circuit judge on the 5th day of June, 1880, at the end of the term, but said judgment was never engrossed in the judgment book, nor was it ever signed as required by article 546 of the Louisiana Code of Practice, a statute regulating prac-
29 tice in the State court; that no application for new trial was made during said term; that — terms of said court intervened before the above application for new trial was made; that no new trial could be granted after the term of court had closed and the other terms intervened, nor could any action of any kind be taken by this court in relation to said judgment, the same having become final and beyond the control of the court before such application for new trial was made; that the court took said application under consideration, and on the 4th day of June, 1883, made the following order:

"In this case, heretofore submitted on the motion of the plaintiffs for a new trial, the court directs that the defendant's counsel prepare a statement of the facts herein and submit it to the counsel for the plaintiffs, and upon the same being filed the court shall prepare a statement and sign the judgment heretofore rendered herein."

That the attorney for defendant protested against said order
30 and objected to the same as illegal, but notwithstanding said protest and objections the court proceeded under the same and found the facts as stated in the findings annexed and signed said judgment; to all of which defendant objected, and specially objected to any finding of facts now so long after said judgment had been rendered and become final, as claimed by said defendant, and objected to the signature to said judgment being given as of this date, whereby plaintiff might claim an extension of time for appeal from said judgment of the — day of April, 1880, after the period for appeal had elapsed; and to the ruling of the court adverse to said objections and against said protest defendant tendered this bill of exceptions, the right to which was reserved to him when the motion for new trial was presented and when the court acted thereon, which is done and allowed.

(Signed) EDWARD C. BILLINGS, *Judge.*

31 *Findings of Fact and Conclusion of Law, Marked Y. Filed June 23d, 1883.*

Circuit Court of the United States, Eastern District of Louisiana.

GAYNOR and BARNEWALL, Assignees of Crawford, Walsh, Butt & Co., Robert Crawford Subrogated,
vs.
W. F. HALSEY. } No. 7929.

In this case the exception of the defendant having been tried by the court, a jury having by consent of parties been waived, and a judgment having been heretofore rendered for the defendant upon the exception, which, by oversight of the clerk, was entered upon the minutes alone and not in the judgment book, the particulars of which are fully set forth in the bill of exception herein signed and allowed in order that the rights of the parties may stand unaffected by such oversight and omission, the court finds the following as the facts which were established upon the trial of said exception:

32 1st. That at the time of the transaction hereinafter set forth and prior to their adjudication in bankruptcy the firm of Crawford, Walsh, Butt & Co. were a copartnership doing business in Mobile, Alabama, composed of six members, one of whom was Robert C. Crawford, the subrogee and present owner of this claim.

2. That on the 3d day of December, A. D. 1873, said firm of Crawford, Walsh, Butt & Co. assigned and set over the claim upon which this suit is brought to G. M. Parker by an assignment, marked copy, Exhibit "B," and made part of this finding.

3. That on the 6th day of April, 1874, said firm made another assignment of said claim to Wm. Dunn for the benefit of certain par-

ties therein named, which is marked copy, Exhibit X, and made part of these findings.

4. That on June 3d, 1874, a petition for an adjudication as bankrupts of said firm was filed in the U. S. district court for the
33 southern district of Alabama, upon which they were by said court adjudicated as bankrupts, both as a partnership and individually, on the 12th day of June, A. D. 1874.

5th. That such proceedings were thereafter had that Barnewall and Gaynor, who originally instituted this action, were duly appointed assignees of said estate of said firm and of the estate of the several members thereof.

6. That after the institution of this suit a sale was made by said Barnewall and Gayner, assigns as aforesaid, of all the assets of said estates, and among them of the claim herein sued on, to the said Robert C. Crawford, one of the members of said firm, who is the sole owner thereof.

7th. That said assignments having been adduced in evidence, and it appearing by the facts above recited that the said Robert C. Crawford was now prosecuting this suit for his sole use and benefit, the court held and ruled, as matters of law, that he could not
34 be heard to impeach the acts of assignment to which he was a party, on the ground of their being void, as against his creditors, and that the petition herein must be dismissed and that there must be judgment for the defendant.

June 23d, 1883.

(Signed) EDWARD C. BILLINGS, *Judge.*

Copy Exhibit B, Referred to in the Foregoing Findings of Fact.

MOBILE, ALA., *Dec'r 3d*, 1873.

For value received we have this day assigned to G. M. Parker, Esq., all our right, title, and interest in and to whatever balance may remain in the hands of W. H. Halsey, ag't of Messrs. Brown Bros. & Co., at New Orleans, arising from our coffee transactions, as may appear when the full amount for credits assumed by Messrs. B. B. & Co., of Brown, Shipley & Co., with the commissions and interests, have been paid, reserving only out of said balance the
35 amount due Marks & Co. for brokerage on the "Lea" cargo, and $\frac{1}{3}$ of the nett profit on same cargo due Wright, Brown & Co.

In witness whereof we have hereunto set our hand this day and date above written.

(Signed) CRAWFORD, WALSH, BUTT & CO.

Witness:

F. S. HORTON.
H'Y SHOOK.

Copy Exhibit X, Referred to in Foregoing Findings of Fact.

OFFICE OF CRAWFORD, WALSH, BUTT & CO.,
MOBILE, ALA., *April 6th*, 1874.

Whereas we are indebted to the following parties the several sums mentioned, and desire to pay the same, we do hereby assignee to Wm. D. Dunn, Esq., of the city and county of Mobile, for the benefit and use of the several parties recited, all our right, title, and interest in and to an amount of money, approximating forty-one hundred dollars in gold ($4,100), due us by W. F. Halsey, agent for Brown Bros. & Co., at New Orleans, the amounted collected
36 to be divided *pro rata* among the claimants after pay and cost of collecting, as follows, to wit:

To G. M. Parker & Son	$1,900,	currency.
" Vass, Ulmer & Co.	600,	"
" Mobile & Ohio R. R. Co.	1,600,	"

In witness whereof we have hereunto attached our signature the day and date above mentioned.

(Signed) CRAWFORD, WALSH, BUTT & CO.

Witness:

(Signed) F. S. HORTON.

Judgment.

Extract from Judgment Book, April Term, 1883.

NEW ORLEANS, SATURDAY, *June 23d*, 1883.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, dist. judge.

HENRY BARNEWALL & W. C. GAYNOR, Assignees.
vs.
W. F. HALSEY. } No. 7929.

The court having found as matters of fact and as conclusions of law what is contained in the paper marked "Y," this day filed of record, and to form a part of same for all purposes, ordered
37 that the judgment herein entered on the minutes on the 1st day of May, 1880, be spread on the minutes of this day and be engrossed in the judgment book to be signed, and is as follows, viz:

"The parties in this cause having heretofore filed a stipulation waiving the intervention of a jury, the cause came on to be heard on the exception of the defendant herein and was argued by counsel; and thereupon, the court considering that an assignment was made by Crawford, Walsh, Butt & Co. to Parker & Son, that the matter was submitted to amicable compounders, who rendered their judgment for defendant, and that the present plaintiff in interest (Robert Crawford, a member of the late firm of Crawford, Walsh, Butt & Co., bankrupts) cannot be heard to set up the invalidity of the transfer by said firm—

"It is ordered, adjudged, and decreed that the exceptions be maintained, and that this suit be dismissed with costs."

Judgment rendered June 23d, 1883.

Judgment signed June 27th, 1883.

(Signed) EDWARD C. BILLINGS, *Judge.*

38 *Petition for Writ of Error & Order. Filed June 26th,* 1884.

BARNEWALL & GAYNOR, Assignees, &c., Robert C. Crawford, Subrogated,
vs.
WILLIAM F. HALSEY. } No. 7929.

To the hon. the judges of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana:

The petition of Robert C. Crawford, subrogated real plaintiff herein, respectfully shows that judgment was rendered against him on June 23d, 1883, and signed on June 27th, 1883, rejecting his claim for four thousand one hundred and eighteen dollars, and interest at eight per centum per annum thereon from 28th February, 1874.

That the amount involved exceeds five thousand dollars.

That he is advised and believes that there is manifest error in said judgment to the great damage of your petitioner, unless he be
39 relieved therefrom by writ of error to the Supreme Court of the United States.

That he tenders herewith the bond for costs and sureties necessary to entitle him to said writ of error.

Wherefore he prays that said bond be accepted, and that a writ of error may be granted, returnable according to law, to the Supreme Court of the United States.

(Signed) E. M. HUDSON,
Att'y for Plaintiff.

Order.

Let a writ of error be granted as herein prayed for upon petitioner's furnishing bond in the sum of two hundred and fifty dollars, with good and sufficient sureties, conditioned as the law requires, returnable to the Supreme Court of the United States on the second Monday of October next.

New Orleans, June 26th, 1884.

(Signed) DON A. PARDEE, *Judge.*

Bond for Writ of Error. Filed June 26th, 1884.

40 Circuit Court of the U. S., Fifth Circuit & Eastern Dist. of La.

HENRY BARNEWALL and WILLIAM C. GAYNOR, Assignees of Crawford, Walsh, Butt & Co., Robert C. Crawford, Subrogated,
vs.
WILLIAM F. HALSEY. } No. 7929.

Know all men by these presents that we, Robert C. Crawford, transferee and subrogee of Henry Barnewall and William C. Gaynor,

assignees of Crawford, Walsh, Butt & Co., as principal, and Starke H. Oliver and J. N. Kidd, as sureties, are held and firmly bound unto William F. Halsey in the full and just sum of two hundred and fifty dollars, to be paid to the said William F. Halsey, his certain attorney, executors, administrators, or assigns, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-third day of June, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of
41 Louisiana, wherein Henry Barnewall and William Gaynor, assignees of Crawford, Walsh, Butt & Co., Robert C. Crawford subrogated, was plaintiff, and William F. Halsey was defendant, judgment was rendered against the said Robert C. Crawford, subrogated, plaintiff, and the said Robert C. Crawford, subrogated, having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation, directed to the said William F. Halsey, citing and admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington the second Monday of October next, 1884:

Now, the condition of the above obligation is such that if the said Robert C. Crawford, transferee and subrogee, shall prosecute his writ to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else, to remain in full force and virtue.

(Signed)	R. C. CRAWFORD.	[SEAL.]
(Do.)	STARKE H. OLIVER.	[SEAL.]
	J. N. KIDD.	[SEAL].

42 Sealed and delivered in the presence of—
(Signed) R. C. CRAWFORD.

UNITED STATES OF AMERICA, *Southern District of Alabama:*

Personally appeared before me, United States commissioner in and for said district, Stark H. Oliver and J. N. Kidd, who, being duly sworn, upon their oath severally deposes and says that they and each of them are worth, beyond all liabilities and exemptions, the sum of two hundred and fifty dollars.

—— ——.
—— ——.

Sworn and subscribed to before me this 23d day of June, A. D. 1884.

(Signed) PAUL RAVESIES,
Commissioner of the Circuit Court of the United States, Southern District of Alabama.

Bond accepted.
June 26th, 1884.
(Signed) DON A. PARDEE, *Judge.*

43 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 42 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Henry Barnewall and William C. Gaynor, assignees, &c., Robert C. Crawford, subrogated, *vs.* William F. Halsey, No. 7929 of the docket of the said court.

Witness my hand and seal of said court, at the city of New Orleans, this 22d day of July, A. D. 1884.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 22d day of July, A. D. 1884.

EDWARD C. BILLINGS, *Judge.*

44 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Henry Barnwall and William C. Gaynor, assignees of Crawford, Walsh, Butt & Co., Robert C. Crawford, subrogated, and William F. Halsey, a manifest error hath happened, to the great damage of the said Robert C. Crawford, subrogated, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 26 day of June, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,

Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

45 [Endorsed:] United States circuit court. No. 7929. Henry Barnwall & William C. Gaynor, assignees of Crawford, Walsh, Butt & Co., Robert C. Crawford, subrogated, *versus* William F. Halsey. Writ of error. No. —. U. S. circuit court, eastern district of Louisiana. Filed June 26, 1884. E. R. Hunt, clerk.

46 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to William F. Halsey, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Henry Barnwall and William C. Gaynor, assignees of Crawford, Walsh, Butt & Co., Robert C. Crawford, subrogated, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Robert C. Crawford, subrogated, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 26th day of June, in the year of our Lord one thousand eight hundred and eighty-four.

DON A. PARDEE, *Judge.*

47 [Endorsed:] United States circuit court. No. 7929. Henry Barnwall and William C. Gaynor, assignees of Crawford, Walsh, Butt & Co., Robert C. Crawford, subrogated, *vs.* William F. Halsey. Citation. No. —. U. S. circuit court, eastern district of Louisiana. Filed June 30, 1884. E. R. Hunt, clerk.

Marshal's Return.

Received Jun- 26, 1884, by the U. S. marshal, and on June 28th, 1884, I served a true duplicate of this, the original citation of error, on William F. Halsey, def'd't in error herein, by delivering the same to Thos. L. Bayne, Esq., the attorney of record for said defendant in error, in person, in the city of New Orleans, eastern district

of Louisiana, the said William F. Halsey being absent from said district at the time of said service.

J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate of this, the original citation of error, on the defendant in error within named as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal, East. Dist. of La.

Subscribed and sworn before me June 30, 1884.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: E. Louisiana C. C. U. S. No. 155. Robert C. Crawford, plaintiff in error, *vs.* William F. Halsey. Filed 23d October, 1884.

124-648

DEC 28 1887

SUPREME COURT OF THE UNITED STATES.

No. 155.

OCTOBER TERM, 1887.

ROBERT C. CRAWFORD, PLAINTIFF IN ERROR.

versus

WILLIAM F. HALSEY.

In Error to the Circuit Court of the United States, for the Eastern District of Louisiana.

Brief for Robert C. Crawford, Plaintiff in Error.

E. M. HUDSON,
For Robert C. Crawford, Plaintiff in Error.

NEW ORLEANS, LA., December 14, 1887.

A. W. Hyatt, Print, 73 Camp St., N. O.—40208

SUPREME COURT OF THE UNITED STATES.

No. 155.

OCTOBER TERM, 1887.

ROBERT C. CRAWFORD, PLAINTIFF IN ERROR.

versus

WILLIAM F. HALSEY.

In Error to the Circuit Court of the United States, for the Eastern District of Louisiana.

Brief for Robert C. Crawford, Plaintiff in Error.

This suit was originally instituted by the Assignees in Bankruptcy of Crawford, Walsh, Butt & Co., against William F. Halsey, for $4,118 85, with interest at eight *per centum* per annum, from February 28th, 1874, Rec. p. 1.

On June 3d, 1874, a petition for the adjudication of Crawford, Walsh, Butt & Co. was filed in the United States District Court, for the Southern District of Alabama, upon which they were adjudicated bankrupts, both as partnership and individually, on June 12th, 1874. The plaintiff in error was one of the six partners composing that firm; and having become the

purchaser of the certain assets of the bankrupts, of which the claim in suit was one, he was subrogated to the original plaintiff's in this suit, and has prosecuted it since his subrogation for his own use, Rec. pp. 9-13 14. Finding of the Circuit Court, Nos. 1 and 4.

Prior to the filing of the petition in bankruptcy, and *within* two months thereof, to-wit: On April 6th, 1874, Crawford, Walsh, Butt & Co. made an assignment of the claim sued on herein to William Dunn, for the benefit of the parties named therein, to-wit: G. M. Parker & Son, Vass, Ulmer & Co., and the Mobile and Ohio Railroad Company. Rec. pp. 13-14. Findings of the Circuit Judge, No. 3, and p. 15. Exhibit X.

On May 12th, 1875, nearly twelve months after the adjudication in bankruptcy, the bankrupts, by their counsel, Messrs. Finney & Miller, entered into a submission to arbitration with the defendant in error, under the assignment to William Dunn. Rec. pp. 7 and 8. Document 1.

Subsequently, on July 29th, 1876, Barnwall & Gaynor, assignees in bankruptcy of Crawford, Walsh, Butt & Co., filed the original petition against defendant in error, in the Circuit Court below. (The date of filing in the transcript is erroneously *printed* July 29th, 1886, but its actual date is readily ascertained by observing that the citation was issued July 29th, 1876.) Rec. pp. 1 and 2. Findings of Circuit Judge, No. 5, Rec. p. 14. An amended petition was filed December 5th, 1876, Rec. p. 4.

To the petitions of the plaintiffs, the defendant pleaded the award in the arbitration. The Circuit Court below found as matter of law that the plaintiff in error could not be heard to impeach the acts of assignment to which he was a party, on the ground of their being void, as against his creditors, and accordingly dismissed the suit, from which judgment this writ of error herein was granted.

ASSIGNMENT OF ERRORS.

First. The Circuit Court erred in giving effect to the defendant's plea, whereby the assignees in bankruptcy, who were not parties either to the assignments of the bankrupts, or to the submission to arbitration by the bankrupts and the defendant, were concluded as to their title to this asset under the adjudication in bankruptcy, and deprived of their priority therein, because:

1st. The plea is defective in allegations, and certainly as a plea of estoppel, or *res adjudicata*, which is the same in effect.

2d. If the matters relied on as an estoppel were well pleaded by allegations *directly made*, they would not amount to an estoppel even in favor of the parties beneficiary named in the assignment (Exhibit X, Rec. p. 15), much less in favor of defendant.

3d. If the matters were well pleaded and did amount to an estoppel in favor of the beneficiaries named in the assignment (Exhibit X), they are not parties or privies to this suit; and the defendant does not claim by, through, or under said beneficiaries, or through any alleged transfer to them.

Second. The court erred in ruling that a bankrupt, who attempts to defeat the operation of the bankrupt law, by assigning his choses in action, is estopped from asserting title under a sale to him by his assignee in bankruptcy against his former transferee.

ARGUMENT.

I.

The facts admitted, or directly alleged by the plea, are:

1st. That on *or about* December 3d, 1873, the defendant, Halsey, was notified of a transfer of the balance in his hands to the beneficiaries, Parker & Sons, and the Mobile and Ohio Rail road.

2d. That on May 12th, 1875, Parker & Sons and the Railroad submitted to an arbitration (which is set out) with Halsey, in which arbitration Crawford, Walsh, Butt & Co., acted to the use of Parker & Sons and the Railroad;

3d. That in December, 1873, this balance had not arisen, no money being then in the hands of Halsey. This fact is admitted by the failure of the plea to deny the allegation of the amended petition that the cargo of coffee, out of which the money arose, was still in the hands of Crawford, Walsh, Butt & Co.'s own agent, for sale, in December, 1873, and that Halsey was not the agent of that firm to sell the coffee.

4th. That Crawford, Walsh, Butt & Co. were adjudicated bankrupts June 12th, 1874, before the submission to arbitration, which occurred May 12th, 1875. This follows from the failure of the plea to deny the allegations of the original petition. Rec. p. 1.

5th. That the cargo belonged to Crawford, Walsh, Butt & Co. It is contended that the plea admits this, because the amended petition (Rec. p. 4) alleges this fact directly, and the plea nowhere denies it. It is true that the plea does say directly that Crawford, Walsh, Butt & Co. *did claim*, in the *collateral controversy* with Halsey, which led up to the arbitration (for the use of Parker & Sons and the Railroad), any balance arising from shipments of coffee on joint account with *Wright, Brown & Co.*, which might remain after the sale thereof by Halsey, an agent of Brown, Brothers & Co. Rec. pp. 6 and 7. But there is no traverse of the allegations of the petitioners, that the coffee belonged to Crawford, Walsh, Butt & Co.; and there is no allegation *directly* made in the plea that there had been any shipment on joint account with Wright, Brown & Co., or that Halsey was Brown, Brothers & Co.'s agent.

6th. That Halsey was *not* the agent of Crawford, Walsh, Butt & Co. to sell the cargo, or to do any other act for them than

to receive the proceeds of sale of the cargo and to account for it to them.

7th. That the assignees in bankruptcy were not parties to the submsssion to arbitration, for they are not so stated to be in the averments of the plea.

8th. That the matters submitted to arbitration was only a *difference between the parties in reference to certain specified charges contained in the account of Halsey, rendered to Crawford, Walsh, Butt & Co., the amount of which had been retained by Halsey out of the funds of Crawford, Walsh, Butt & Co.* This, and this alone, is the matter alleged to have been submitted to arbitration; and the submission expressly confines the arbitration to the matter so recited. Rec. p. 8.

9th. That, as shown by the award averred in the plea (Rec. p. 8), Halsey *took possession* of the cargo in view of the failure of Crawford, Walsh, *Smith* & Co. (of which firm the pleadings give no information); and this raises the clear inference that he did not take possession before the bankruptcy, or as agent of Crawford, Walsh, Butt & Co.

10th. That the arbitrator found Halsey's charges to be legitimate as against Crawford, Walsh, Butt & Co.; but the plea, by reference to the award, makes no pretense that this was allowed as against the assignees in bankruptcy, who were no party to the award.

It is nowhere alleged in the plea that the arbitration was had *after* the plaintiff in error, Crawford, bought the asset in controversy. The inference coincides with the facts shown by the record (pp. 8 and 9), that it was *before*, the award bearing date June 10th, 1875, and the sale to Crawford that of May 27th, 1879. Nor does it allege that Halsey claims under any transfer, actual or supposed, from Crawford, Walsh, Butt & Co., to himself, or under any transfer by them to Parker & Sons, or the

Railroad. There is no allegation that Halsey did anything to his detriment by reason of the recital of the submission that Crawford, Walsh, Butt & Co, claimed *as against him* to have made a transfer to Parker & Sons and the Railroad. It nowhere appears that Halsey was ignorant of the bankruptcy of Crawford, Walsh, Butt & Co. when he entered into the arbitration, or that he could not, by diligence, have learned that fact, and that the assignees in bankruptcy had a priority over him, the firm and the arbitration. No allegation is made that Halsey believed that the transfer by Crawford, Walsh, Butt & Co. to Parker & Sons and the Railroad was intended to deceive or did deceive him, as to the existence of the bankruptcy of that firm.

Whether the title of the assignee in bankruptcy would or would not be superior to the right of Halsey to retain the money as a set-off, is not involved in this record ; the *plea* does not raise the question ; for it is pleaded expressly as *a plea of estoppel by award.* It is purely a question *of the conclusiveness of the award on the title of the assignee in bankruptcy,* now in the hands of and owned by the plaintiff in error.

1st. Certainty is necessary in plea of estoppel ; and this applies to the allegations of the facts, the mutuality, the privity, the reciprocity, the detriment sustained, the intent, the materiality, and also to the substantial justice to be effected by the estoppel.

Herman on Estoppel, p. 11, Sec. 9 ; Russel vs. Place, 94 U. S. (4th Otto) Rep. p. 606 ; 6 Wait's Actions and Defenses, p. 680, § (2) ; Christman vs. Harmon, 29 Gratt. (Va.) Rep. p. 494.

2d. In how far recitals create estoppels, see Herman on Estoppels, p. 8, Sec. 4 ; also as to their operation on estates. Such estoppels operate only between the parties and privies to the recital. Herman on Estoppels, pp. 322, 323. Strangers to the act are not bound. 6 Wait's Actions and Defenses, p. 681 ;

11 Ill. Rep. p. 531; 53 Ga. Rep. p. 257; 47 Penn. State Rep. p. 411; 30 N. H. Rep. p. 104. Nor will the fact that a person has been guilty of fraud as to one person estop him as to another person, who is not privy in estate with the first.

3d. The act which one is induced to do must be other than he would have done, or there is no estoppel. 52 Penn. State Rep. p. 531; 45 N. H. Rep. p. 113; and the act must be detrimental. 43 Mass. Rep. p. 192; 66 Barbour R. p. 310; 6 Wait's Actions and Defenses, p. 679, 681, Art. (2), § (1); 50 Vt. Rep. p. 116. The person so estopped must have wilfully misled the other. Herman on Estoppel, p. 8, Sec. 4; 40 Maine Rep. p. 348; 6 Wait's Actions and Defenses, p. 684, § (4); 38 Cal. Rep. p. 300: 44 Md. Rep. p. 551; 37 Penn. State Rep. pp. 379 to 384; and have intended that the opposite party should act on the recital to his prejudice. 6 Wait's Actions and Defenses, p. 684, § 5.

4th. Estoppels by recitals must be reciprocal or mutual, and operate mutually between the parties as to the point estopped; both parties must be bound or neither is bound. Miles vs. Miles, 8 Watts & Serg. (Penn) Rep. p. 135; Lansing vs. Montgomery, 2 Johns' Rep. p. 382; 5 Wall. (U. S.) Rep. p. 675; 6 Wait's Actions and Defenses, p. 680, §§ 3 and 4.

5th. Arbitrations, like judgments, only operate as estoppels, as to the matters submitted and adjudicated. Herman on Estoppels, p. 172, Sec. 159 to p. 174, Sec. 161.

6th. Estoppels apply only in furtherance of substantial justice, but not to defeat the intention of an act of Congress, or to sustain a transaction repugnant to the bankrupt law. 6 Wait's Actions and Defenses, pp. 679 and 688, § 9; 21 How. (U. S.) Rep. pp. 297 and 326; 1 McLean (C. C.) Rep. p. 384; 29 Ill. Rep. p. 426; 7 Barbour Rep. p. 644.

II.

The finding and ruling of the Circuit Court, as to matters of law, that the plaintiff in error could not be heard to impeach the acts of assignment to which he was a party, on the ground of their being void against his creditors, seems to be entirely *inconsistent* with the issue raised by the *plea*. This is the more apparent when, by examination of the record, it is seen that the suit for this asset was brought by the assignees in bankruptcy *themselves*, that the plea was set up by defendant against *them* and *their title* to the asset in controversy; whereas the ruling of the Circuit Court ignores the effect of the plea as an estoppel by award against the assignees in bankruptcy and their title as such, and holds that the *purchaser and present owner* of that asset is estopped, *not by the award pleaded*, but by the fact that he was a member of the bankrupt firm which made an assignment in fraud of creditors within sixty days of bankruptcy. This ruling directly raises the question whether, if there had been *no* submission to arbitration, the unlawful or fraudulent attempt of a bankrupt to defeat the operation of the bankrupt law by assigning his choses in action would estop him from purchasing them at the sale of his assignee in bankruptcy, and from asserting this *subsequent title* against his first transferee. It requires but little examination of the record to see that no such issue is raised by the plea. But is this ruling of the Circuit Court, even if the issue had been made by the plea, correct in law? That a bankrupt may become the purchaser of his assets, at a sale thereof by his assignee in bankruptcy, is undoubted. 12 Smedes and Marshal's Rep. p. 258. U. S. Rev. Stat. Sec. 5128, Sec. 5129, Sec. 5130, Secs. 5064 5065. It follows, then, that his title thus acquired is the same, both in extent and character, as that which the assignee in bankruptcy could convey to another person so purchasing. Nothing more and nothing less. After his adjudication in bankruptcy the

bankrupt ceases to be, *quoad* his former estate, the same person. He is in *that* respect *civiliter mortuus* from the moment of the adjudication; but, as to every other relation to property, he becomes likewise a *new person*, capable of contracting and acquiring property as fully as any other person. The law makes no distinction as to the title conveyed to one purchaser or another at a sale of the estate of a bankrupt. Suppose that the assignee in bankruptcy himself, in the case at bar, had successfully asserted in the court his title to the asset in controversy by means of a judgment against the defendant, Halsey, and had then sold that *judgment*, as an asset of the bankrupt firm, to the former bankrupt, the plaintiff in error, could it be pretended that he could not then execute the judgment against Halsey so acquired? And if the assignee in bankruptcy takes only the title which the bankrupt had in the estate surrendered at the moment of his adjudication, wherein lies the difference between the conveyance by the assignee in bankruptcy of a chose in action itself of the bankrupt, and that of a judgment obtained upon the chose in action by the assignee in bankruptcy? If the assignee in bankruptcy had a just cause of action for recovery, wherein differs his right of action from that of the bankrupt purchasing this very right of action? Certainly he has just the same right of action as had his assignee in bankruptcy; he can assert it to just the same extent and in just the same manner; and when, in an action at law, brought by his assignee in bankruptcy, he becomes purchaser of the asset sued on and is subrogated of record as plaintiff in the cause, his rights, as to all his title and interest in the pending suit, in no manner become less than those of the assignee in bankruptcy—they are identical. He is entitled to recover just what his assignee in bankruptcy could have recovered; for his title is that of the latter in every respect—he stands in the shoes of the latter.

III.

The record presents a bill of exceptions taken by the defendant as to the signing of the judgment herein. Rec. pp. 12 and 13. From this it appears that judgment was rendered herein on May 1st, 1880, that, the same not having been signed by the Circuit Judge, a motion was made for a new trial on February 1st, 1883; and that on June 4th, 1883, the Circuit Court entered an order requiring counsel for defendant to prepare a statement of facts on the motion for a new trial, upon which being filed the court would prepare a statement and sign the judgment heretofore rendered, i. e., May 1st, 1880; and accordingly the new trial was refused and said judgment signed on June 23d, 1883. Rec. pp. 13 and 14. Defendant contends that the signing of said judgment three years after its rendition was error.

Article 546 of the Louisiana Code of Practice requires all judgments to be signed by the judge, but not until three judicial days shall have elapsed after their rendition. But such judgment may be signed at any time later; and, until so signed, such judgment does not become final and no appeal or writ of error will lie. See, also, 5 N. S. (Martin's Louisiana Sup. Court Reports) p. 320. Smith vs. Harrathy; 4 Rob. (La. Sup. Court Reports) p. 152, Smelser vs. Williams; 8 Peters (U. S. Sup. Court Rep.) p. 292, Insurance Co. vs. Wilson's Heirs; also, p. 396. The action of the Circuit Court in signing this judgment was, therefore, strictly according to the law obtaining in the U. S. Circuit Court on the lawside, as well as in the State courts, in Louisiana.

Respectfully submitted,

E. M. HUDSON,

For Plaintiff in Error.

121-648

Supreme Court of the United States.

OCTOBER TERM, 1887.

ROBERT C. CRAWFORD, PLAINTIFF IN ERROR,

versus

WILLIAM F. HALSEY.

THOS. L. BAYNE,
GEO. DENEGRE,
Attorneys for defendant.

L. GRAHAM & SON, PRINTERS, 101 GRAVIER ST., N. O.

Supreme Court of the United States.

OCTOBER TERM, 1887.

ROBERT C. CRAWFORD, PLAINTIFF IN ERROR,

versus

WILLIAM F. HALSEY.

STATEMENT.

The defendant, who was at New Orleans the agent of the well known banking firm of Brown Brothers & Co., of New York, received a cargo of coffee of about 400 bags, on the "Lizzie Fox," consigned for sale and for receipt of proceeds, to be applied to bills due by Messrs. Crawford, Walsh and Butt & Co. to Messrs. Brown Brothers & Co., and to be paid over to Messrs. Wright, Brown & Co., jointly interested in the cargo.

The coffee was sold—the price was paid over to him in bills of the purchasers, which were duly collected and the proceeds, amounting to about one hundred and sixty thousand dollars, were disbursed in accordance with the instructions given to him.

Messrs. Crawford, Walsh, Butt & Co. accepted the action of the defendant as in all respects satisfactory, except that they claimed that the amount charged for insurance was too large and that there was error in the charges made by defendant for commissions and charges on the sales of the cargoes of coffee of the brig "Glide" and the "Lizzie Fox" (see document 1, page 7, for detail). Messrs. Crawford, Walsh and Butt & Co. on the 3d of December, 1873, transferred to G. M. Parker "all of their right, title and interest in and to whatever balances may remain in the hands of William F. Halsey, agent of Messrs. Brown Brothers & Co. at New Orleans, arising from our coffee transactions, as may appear when the full amount of credits assumed by Messrs. Brown Brothers & Co., with

commissions and interests, have been paid, reserving only, out of said balance the amount due Marks & Co. for brokerage on the "Lea" cargo, and one-third of the net profit on same cargo due Wright, Brown & Co." And, on the 6th of April, 1874, they reiterated this assignment to Parker and others, through W. D. Dunn, Esq., declaring that the claim assigned approximated forty-one hundred dollars in gold (page 15; and copy of claim is given, page 6).

The defendant denied that the parties had any rightful claim against him, but to avoid any lawsuit agreed with their attorneys, Messrs. Miller & Finney (distinguished members of the New Orleans bar), to submit all the matters in controversy to arbitration and amicable compounders. Merchants of high standing were selected, and they were invested with full power as arbitrators and amicable compounders to settle all matters at issue, and the party failing to comply with the award was to pay five hundred dollars to the other party as a forfeit for such failure. (Document 1, page 7.)

The decision of the umpire chosen under the agreement is found at page eight (8) of the Record, and this decision, rendered on the 10th of June, 1875, fully sustained the defendant and rejected the claim made by the plaintiff.

All parties seemed to have accepted this decision as final, and acquiesced in it for more than a year. The laws of Louisiana favor this mode of settlement of disputes. Civil Code 340. 17 Louisiana Report 285. 4 La. An. Rep. 149. Bird vs. Laycock, 7 La. An. Rep. 172. "*Nemo debet bis vexari pro una et eadem causa.*"

On the 29th of July, 1876, Barnwell & Gaynor, claiming to be assignees of Crawford, Walsh & Butt & Co. in bankruptcy, instituted this suit. The defendant filed an exception setting forth that all of the matters involved had been submitted to arbitration and amicable compounders, whose decision was final and constituted a complete bar to their action.

On the trial of this action on the 20th of April, 1880, a paper was offered by plaintiff to show a transfer of this claim to Robt. Crawford by William C. Gaynor, signing as "assignee of Crawford, Walsh, Smith & Co. et al., bankrupts."

The exception was maintained and the judgment was rendered for defendant; both on the ground that the parties in interest had submitted the claim now presented to arbitrators and amicable compounders, and that Crawford now claiming was a member of the firm making assignment to Parker & Son & Dunn, and could not be heard to allege that the assignment was void or to be avoided in consequence of his own fraudulent act—that is, because the assignment was in fraud of his creditors under the bankrupt act. P. 10 of the Record.

Robert Crawford, one of the members of the bankrupt firm of Crawford, Walsh, Butt & Co. (which firm had transferred to Parker & Son and others, this claim against the defendant on the third day of December, 1873, six months prior to their bankruptcy), appeared on the trial of the exception, and without any formal pleading of any kind, but asserting ownership of the claim under the receipt found at page 9 of the Record, sought to set aside the transfer made by his own firm on the ground that it was fraudulently made by him and his firm, within a period of six months prior to their bankruptcy. The object of this assertion being to avoid the action of his firm and its assignees in submitting the claim to arbitration and judgment thereunder as shown by the Record at pages 7 and 8.

It was decided that the judgment of the arbitrators was in favor of defendant, and that Crawford could not impeach his own act on the ground that it was fraudulent, and that therefore the assignment should be held to be void; that he could not be allowed to do this. Judgment was rendered in favor of the defendant on the first day of May, 1880, "the Court considering that an assignment was made by Crawford, Walsh, Butt & Co. to Parker & Son; that the matter was submitted to amicable compounders who rendered their judgment for defendants, and that the present plaintiff, Robert C. Crawford, a member of the late firm of Crawford, Walsh, Butt & Co., bankrupts, cannot be heard to set up the invalidity of the transfer (page 10). No complaint was made by plaintiff of the judgment during the term of Court of 1880, nor the terms of the Court during the years 1881 and 1882, but in February,

1883, after four terms of the Court had elapsed, the plaintiff made a motion for a new trial on the ground "that the Court failed to give effect to evidence showing an assignment of the claim sued on by the bankrupts within less than two months of the commencement of the proceedings in bankruptcy;" that the Court erred in holding that the bankrupt could not contest the validity of the assignment of the claim made by them prior to his bankruptcy (pp. 10, 11).

The judge then directed counsel to submit a statement of the facts and declared the "Court shall prepare its statement and sign the judgment heretofore rendered herein." Defendant's bill of exception recites the facts as found by the judge and insists that no motion for a new trial could be made and heard after the term of the Court ended and after several succeeding terms of the Court had intervened (pages 12 and 13 of the Record), and there can be no finding of facts by the Court years after judgment has been rendered.

Judgment had been rendered and entered upon the minutes of the Court on the 1st day of May, 1880, the minutes were duly signed by the judge on the 5th day of June, 1880, at the end of the term. The judgment determined that all parties interested had submitted their disputes to amicable compounders, and that their judgment was in favor of the defendant. This, then, is a finality. The Court further found and decided that the present plaintiff in error was a member of the firm of Crawford, Walsh, Butt & Co., and that he cannot be heard to set up the invalidity of the transfer by said firm. These proceedings and pleadings were not objected to when the case was tried or the judgment rendered, nor when motion for new trial was made, but only now in the brief in argument, nearly three years afterwards. The pleadings are in accord with the laws of the State. 3 Woods 378.

The succeeding term begins on the first day of November, and ends on the 3rd Monday in April, when the April term begins as provided by law. After four terms of the Court had elapsed, the plaintiff, on the first day of February, 1883, made a motion for a new trial. It appeared that he discovered that the deputy clerk had neglected to present this judgment for

signature, as was usual in the current routine of the office. (Bill of exception, p. 13).

The plaintiff in error appeared for the first time in the case on the 20th of April, 1880, the day of the trial of the exception, and filed an alleged transfer from W. C. Gaynor, as assignee of Walsh Smith & Co., et als., bankrupts, which purports to have been made on the 27th day of May, 1879, on the general statement, as for value received. There is no petition, no plea, nor other proceeding making him the plaintiff in the action. The writ of error is taken in his own name alone, and gives him no standing in this court. We respectfully submit that this writ should be dismissed.

Ex parte Cutting, 94 U. S. 14; Payne vs. Niles, 20 Howard 220; Muller vs. Ehlers, 91 U. S. 250.

ARGUMENT.

He claims the transfer of a right to litigate; to set aside the assignment of a claim as made by him and his firm in fraud of their creditors, and as fraudulent under the bankrupt law. See Story's Equity Jurisprudence, 1040, g.

"An assignment of a right to file a bill in equity for a fraud committed upon the assignor will be held to be void as contrary to public policy." How much more is it true that the assignor who committed the fraud cannot be heard to allege this, and maintain a suit to set aside his own fraud!

A statement of facts cannot be made after judgment has been rendered, and used as the basis for a writ of error, and upon a motion for a new trial, which was never granted. (Minutes of the Court, p. 11, and bill of exception, p. 13.) The Judge merely performed the ministerial act of signing a judgment which had been rendered nearly three years before, and then for the first time was called upon to make a statement of facts. There were no exceptions to pleadings, nor bill of exceptions as to evidence or the rulings of the court, on the trial when judgment was rendered.

Generes vs. Bonnemer, 7 Wallace 565; Insurance Co. vs. Folsom, 18 Wallace Rep., 248.

A motion for a new trial cannot be entertained after the end of the term in which judgment was rendered. Here several terms had intervened.

Gambuston vs. United States, 95 U. S. 287.

Coughlan vs. District of Columbia, 106 U. S. 7.

The matter of granting a new trial after the term of the Court was ended relates to "the *power* of the Courts and not to the modes of procedure. It is whether there exist in the Court the authorities to set aside, vacate and modify its final judgment after the term at which it was rendered; and this authority can neither be conferred upon nor withheld from the Courts of the United States by the statutes of a State or the practice of its Courts." Brownson vs. Schulten, 104 U. S., 417; Freeman vs. Dawson, 110 U. S., 269; Sheppard vs. Wilson, 6 Howard, 265; Brush & Durham vs. Robbins, 3 McLean's Rep., 486. In Phillips vs. Negley, 117 U. S., 654, all of the authorities are reviewed.

In the case cited from 8th. Peters, 304, the Court say: "The act of signing the judgment is a ministerial and not a judicial act," and assimilated it to the signing of a citation for a writ of error. It is stated, p. 303, that the question whether a new trial may be granted after the term of the Court was ended is not raised nor decided.

The Courts of the United States, in dealing with motions for new trials, the signing of judgments and the control of process are governed by their own rules long established. And as was said in the case of Indianapolis Railroad Company vs. Horst, 93 U. S., 301, "this is a rule of law established by this Court, and not a mere matter of proceeding or practice in the Circuit and Districts Courts. Henderson vs. Moore, 5 Cranch, II; Boswell vs. della Lanza, 20 Howard, 29; Schuchart vs. Allen, 1 Wall., 381." Newcomb vs. Woods, 97 U. S., 583.

There was no exception made to any pleading or evidence on the trial of the case, and none to the judgment of the Court when rendered, nor was any statement of facts asked for by the plaintiff, nor any made by the Judge on the trial or during the term in which judgment was rendered, and none could be

taken or made after the end of the term. Muller vs. Ehlers, 91 U. S., 250. Citing 7 Wallace, 565; 9 Wallace, 425, and 9 Wheaton, 651. Phillips' Practice Supreme Court, pp. 119, 127; Marye vs. Strouse, 6 Sawyer Rep. 205.

The assignment made by Crawford, Walsh, Butt & Co., to Parker & Son, and others, cannot be treated by the plaintiff's in error as a nullity, but this transfer must be set aside and annulled in an action against Parker & Son, Dunn and others, assignees, before any action can be instituted against this defendant. Parker & Son, Dunn and others are citizens of Mobile, Alabama, where the plaintiff in error resides, and the transfer should have been attacked there in a suit against them. They are necessary parties to an action in which the assignment to them is sought to be set aside. 17 Howard 130; 8 Blachford 128, 19 Howard 113.

They prosecuted the claim against this defendant, with the concurrence of Crawford, Walsh, Butt & Co., who represented their assignment to be good, and defendant acted upon their representations, and they and their assignees acquiesced in the judgment rendered against them, and plaintiff is estopped from asserting that it was fraudulent. Bronson vs. Chappel, 12 Wallace 682.

After they have taken their chances for recovery by submitting to arbitration and judgment has been rendered against them, one of the members of the bankrupt firm, treating this assignment made by his firm to Parker & Son and Dunn, as an absolute nullity (on the ground that it was made by them in fraud of their creditors), prosecutes this claim against this defendant who has already stood his trial on the same claim presented by them and the persons to whom plaintiff's firm had made the assignment. (Record, p. 7 and 8.)

The Judge *a qua* decided that, "he could not be heard to impeach the acts of assignment to which he was a party, on the ground of their being void as against his creditors." He is now seeking to avoid his own act for his own benefit. He cannot ask the Court to declare that his own act is fraudulent, and to give him the special benefit from such act. "*Allegans suam turpitudenem non est audiendus.*"

The general rule is that the assignee in bankruptcy takes only such rights as the bankrupt had. Bump on Bankruptcy, pp. 484-487; Winsor vs. Kendall, 2 Story Rep. 515; 1 Wood 477; 15 Miss. Rep. 586; 30 Maine 121. Section 5046 of the Revised Statutes (the bankrupt act) confers upon the assignee as the representative of the creditors, the additional right to sue for and recover property transferred by the bankrupt in fraud of his creditors. This right, which is thus given to the assignee for the benefit of the creditors, is exceptional in their favor only, and cannot accrue to the bankrupt himself. Tiffany vs. Boatman, 18 Wallace 387; 1 Curtis 235; 17 Howard Rep. 321; 98 U. S. 24. He is a debtor, and remains such notwithstanding his bankruptcy. Meyer vs. Dewey, 103 U. S. 303; 102 U. S. 649; 115 U. S. 620.

In *re* Burton, 29 Federal Reporter, p. 638, citing 115 U. S. 620, it is held that a bankrupt could not purchase and take an assignment of liens against his estate in bankruptcy and exclude his creditors holding inferior liens. Page 640.

"One of the debts claimed in this case by the bankrupt (the Slaughter debt No. 3), illustrates the remarkable position the bankrupt might occupy, and the gross injustice that might be done if any other rule prevailed than that just laid down by the Court. This debt was paid off by an endorser; whether by the first, second, or third endorser is not shown. Suppose it was paid by the second endorser; of course, he would have a right to recover of the first endorser the amount paid. But he sells and assigns the debt, of course, with all his rights, to the bankrupt, here the principal debtor.

Would there be any justice in allowing this principal debtor to recover of the prior endorser the amount paid by the second endorser in satisfaction of the obligation of the principal debtor? Yet this is exactly what might occur if the position contended for by counsel for the principal debtor here, E. J. Burton, be allowed as law. Again, suppose that one of the three sureties had paid off the whole of this debt, he would be entitled to contribution from his two co-sureties. But he assigns his claim to the principal debtor, who purchases it. Will it be pretended that his principal debtor could or ought

to be allowed to recover off of his own sureties two-thirds of a debt paid for him by a third surety? The statement of the question must answer it in the negative."

The same reason will apply with greater force to a bankrupt seeking to purchase the privilege which the law grants to his creditors or the assignee in bankruptcy to set aside fraudulent transfers made by him in favor of his creditors; but it certainly never was intended to give this right to him to set aside his own fraudulent acts for his own benefit. It would be most unjust and inequitable to allow him to take back that which he gave in satisfaction of a debt, and thus enable him to plead as his discharge against the creditor to whom the transfer was made or to sue upon the debt which had been transferred to him, although in the meantime his transferee has exercised his rights against the debtor.

The judgment of the Court *a qua* rendered on the 1st day of May, 1880 (p. 10). on the facts as found by the judge (pp. 13–14), is equally conclusive against the plaintiff on the other ground stated (p. 10), viz.: "The Court, considering that an assignment was made by Crawford, Walsh, Butt & Co. to Parker & Son; that the matter was submitted to amicable compounders, who rendered their judgment for defendant," the exception is maintained. It is found as a fact (p. 13) "that on the 3d day of December, A. D. 1873, said firm of Crawford, Walsh, Butt & Co. assigned and set over the claim upon which this suit is brought to G. M. Parker by an assignment marked Copy Exhibit B and made part of this finding."

"That on the 6th day of April, 1874, said firm made another assignment of said claim to Wm. Dunn, for the benefit of certain parties therein named, which is marked Copy Exhibit X and made part of these findings." That the firm of Crawford, Walsh, Butt & Co., of which the present plaintiff in error was a member, was adjudicated bankrupt as a partnership and individually on the 12th of June, 1874. Parker & Son & Dunn, to whom the claim was assigned, with Crawford, Walsh, Butt & Co. assisting them, deliberately submitted the claim to amicable compounders (p. 7), and the judgment is

res adjudicata. It is under the laws of Louisiana a conclusive judgment.

"Whatever has been honestly done in relation to the matters actually referred to, the decision of the amicable compounders cannot be revised or altered by a court of justice. Code of Practice, articles 459 and 460; La. Code, article 3077, 3096. In Davis vs. Leeds, 7 La. Rep., 477, this Court said: 'Parties will submit their disputes to be decided by men chosen by themselves as judges, under the appellation of amicable compounders; they must abide their judgments without hopes of having them revised by the courts of justice, established by the constitution and laws of the State. Such judges are not required to determine according to the strictness of the law; they are authorized to abate something of this strictness in favor of natural equity.'"

As we have shown, the exception filed by defendants is in accordance with the law and practice in Louisiana. Code of Practice, Art. 330, 539. Williams vs. Bethary, 7 La. Rep., 94; Foss vs. Brentel, 14 An., 798. In the case of Jeter vs. Hewitt, 22 Howard Rep., 363, the Supreme Court say:

"The authority of *res judicata* as a medium of proof is acknowledged in the Civil Code of Louisiana; and its precise effect in the particular case under consideration is ascertained in the statute that allows the proceeding by monition. Under the system of that State, the maintenance of public order, the repose of society and the quiet of families, require that what has been definitely determined by competent tribunals shall be accepted as irrefragable legal truth. So deeply is this principle implanted in her jurisprudence, that commentators upon it have said, the *res judicata* renders white that which is black, and straight that which is crooked. *Facit ex curvo rectum, ex albo nigrum.* No other evidence can afford strength to the presumption of truth it creates, no argument can detract from its legal efficacy."

No objection was made to the exception on the trial, nor after judgment, when the motion for new trial was made nearly three years after the judgment was rendered; the only grounds upon which the application was made were, "that

said judgment is contrary to the law and the evidence, in that the Court failed to give effect to evidence showing an assignment of the claim sued on by the bankrupts within less than two months of the commencement of proceedings in bankruptcy, and in that the Court erred in holding that one of the discharged bankrupts, now subrogated herein, could not be heard to contest the validity of the said assignment of April 6th, 1874." A new trial was not granted & judgment

The matters submitted and decided are shown by the findings of fact by the Judge, page 13, to have been the same claim upon which suit is brought. "That on the 3d of December, A. D. 1873, said firm of Crawford, Walsh, Butts & Co. assigned and set over the claim upon which this suit is brought to G. M. Parker, by an assignment marked Copy Exhibit B and made part of this finding." The exceptions were sustained by the Court *a qua*, and this suit was dismissed.

We respectfully ask that the judgment may be affirmed.

THOS. L. BAYNE,
GEO. DENEGRE,
Attorneys for defendant.

& cannot be changed except after granting new trial. Balis v. Wilson. 12 Martin, 359